In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 527

ANDREW ANTHONY AHO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

The basic question here is whether, in view of the administrative compensation remedies available under the Federal Employees' Compensation Act,[1] both courts below correctly dismissed petitioner's libel against the United States for damages for sickness allegedly incurred incident to the performance of his duties as a federal civilian employee on a government vessel.

[1] Federal Employees' Compensation Act, 5 U.S.C. 8116(c) (1964 ed., Supp. II). This is the most recent codification of 5 U.S.C. 757(b), Act of September 6, 1966, Public Law 89-544, 80 Stat. 378. Compensation benefits payable under this Act may be as high as $1,450 per month. 5 U.S.C. Appendix 756(c) (1964 ed., Supp. II).

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In *Johansen* v. *United States*, 343 U.S. 427, and *Patterson* v. *United States*, 359 U.S. 495, this Court squarely held that the Federal Employees' Compensation Act furnishes the exclusive mode of redress against the United States for sickness and injuries incurred by seamen employed by the United States aboard government vessels. And, as pointed out by the court below, this Court on two recent occasions has "expressly recognized the continuing vitality of its earlier decisions" in *Johansen* and *Patterson* (Pet. App. 13). *Amell* v. *United States*, 384 U.S. 158, 160-161; *United States* v. *Demko*, 385 U.S. 149, 151. Indeed, in *Demko* (385 U.S. at 151, n. 4), as further noted by the court below (Pet. App. 13), this Court "has in effect given specific approval to" *Jarvis* v. *United States*, 342 F. 2d 799 (C.A. 5), certiorari denied, 382 U.S. 831, a decision turning on the identical issue again raised by petitioner in the present case.

Petitioner seeks to avoid the impact of these settled and consistent holdings by contending (Pet. 9) that *Reed* v. *The Yaka*, 373 U.S. 410, calls for a different result here. But *The Yaka* case, of course, involved only the liability of private employers and presented no question of governmental immunity from suit by its employees, for whom Congress has provided a comprehensive administrative compensation system. Indeed, as pointed out by the district court below, "the United States, unlike other shipowners, can be sued only upon its own terms because of its sovereign immunity" (Pet. App. 16). Moreover, "the terms of its consent to be sued in any court define that court's

jurisdiction to entertain the suit." *United States* v. *Sherwood,* 312 U.S. 584, 586. Here the terms of the government's consent make the Federal Employees' Compensation Act remedy available "to the exclusion of both the Public Vessels Act, *Johansen* v. *United States,* 343 U.S. 427, and the Suits in Admiralty Act, *Patterson* v. *United States,* 359 U.S. 495." *Amell* v. *United States,* 384 U.S. at 160–161. *Amell* was of course decided subsequent to this Court's decision in *The Yaka* (see Pet. App. 15–17).

Thus, the decision below is plainly correct and is in full accord with this Court's earlier decisions directly in point. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted,

RALPH S. SPRITZER,
Acting Solicitor General.

SEPTEMBER 1967.

U.S. GOVERNMENT PRINTING OFFICE: 1967